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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,431	04/13/2004	Leo M. Pedlow JR.	SNY-T5775.02	4023
24337	7590	10/12/2006	EXAMINER	
MILLER PATENT SERVICES 2500 DOCKERY LANE RALEIGH, NC 27606			HOMAYOUNMEHR, FARID	
			ART UNIT	PAPER NUMBER
			2132	

DATE MAILED: 10/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)	
	10/823,431	PEDLOW, LEO M.	
	Examiner	Art Unit	
	Farid Homayounmehr	2132	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 25 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
**GILBERTO BARRON JR**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**

Continuation of 11. does NOT place the application in condition for allowance because: Applicants have stated the Final Rejection of the claims as anticipated by So is inappropriate, however, applicants' arguments are not persuasive as follows.

Applicants have argued that ECM retrofitting changes only a small quantity of data. This is not contrary to any limitation of claims at hand. In fact, a well-recognized benefit of applicants invention, which relies on partial (selective) encryption is the very fact that smaller amount of encryption will be beneficial to providing video on demand service.

Applicants have repeated their argument reflected in their previous responses that although So defines Selective Encryption, he fails to recognize that selective encryption can be beneficially used as taught by applicant to reduce the number of encrypters required for real time encryption. However, the benefit of selective encryption in reduction the number of encrypters was well-known and recognized at the time of invention. So clearly suggests selective encryption as one of the methods for encryption in [0106], and clearly shows its intention to reduce the number of encrypters at paragraph [0016]. Therefore, the benefits of selective encryption are well-recognized by So.

Applicants further argue there is a fundamental difference between So and applicant's claims in that So uses pre-encryption, while Applicant's encryption is carried out on-demand (i.e., session based-per title). Applicants have used the phrase "encryption on demand" several times in their arguments to allegedly distinguish their art from So. Per requirements of claim 1, encryption is performed after a request is made. It should be noted that claim 1 language does not include a limitation for performing encryption every time a request is made. Claim 1 requires selective encryption after a request is received (emphasis added). Therefore, applicant's arguments based on "encryption on demand" is actually based on an encryption after a request is received. So meets this requirement as follows.

The pre-encrypted content of So is generated based on requirements of different cable systems. Pre-encrypted content is produced by CPS [0045], which encrypts the content based on specifications of CAS [0051], which generates cryptographic parameters based on each cable system requirements [0062]. Therefore, when pre-encrypted content is generated, it is based on a demand (request) from cable systems.

In addition, So teaches using pre-encryption in combination with another "encryption on demand". As discussed in the previous office actions, So teaches an on demand video delivery system (for example, paragraph [0042]). So's pre-encrypted content, is not delivered to a video on demand client before completion of encryption process and addition of appropriate ECMs, which are created according to the privileges of the client (see paragraph [0048]). In one identified embodiment of So's invention, the ECMs are generated after the request from client (see paragraph [0060]) when ECMs are generated based on purchase reports.

In addition, paragraph [0098] describes a streaming mode, where the content is streamed to the client, while the client controls the encryption process in real-time. Therefore, So meets claim 1 requirements and uses pre-encryption and encryption on demand with no conflict. Applicants' argument that So is against encryption on demand is not persuasive.

Applicants continue their argument by, citing portions of claim 1, reflecting their if-then requirements, which requires an order in sequence of processes. Applicants argue that their invention requires an order that first receives the request, determines if it is from a terminal with certain encryption capabilities and then encrypts. Applicants argue "So's teachings which are to paraphrase, pre-encrypt, receive request and retrofit encrypted content". However, applicant's paraphrase of So's invention misses the activities before So's pre-encryption, which as discussed before, includes reception of a request, and determination of the type of recipients' decryption capabilities, and pre-encrypting accordingly. What is also missing from the paraphrasing is So's other embodiment, which allows real time streaming, as described before, which teaches all requirements of claim 1, including the if-then analysis.

Applicants continue their argument by attempting to prove their claim 1 requires real-time encryption. Applicants state that real-time encryption is construed to mean encryption on demand, and claim 1 requires encryption on demand. However, as mentioned before, claim 1 requires encryption after a request is received. This is broader than encryption on demand, which is generally perceived to require encrypting every time there is a request. If applicants equate on demand encryption to encryption after a request, then, as discussed above, So's invention also teaches encryption on demand.

Applicants continue their argument by stating So' whole objective is to move the encryption process forward. While it is true that So moves the encryption forward to expedite the process, it is not correct to concluded that pre-encryption is all that So teaches. So clearly explains the objectives of a Video On Demand system, which includes content delivery upon client's request. So recognizes that the content must be protected from piracy, and therefore must be encrypted, and the encrypted content must be decrypted by the authorized client only. So mentions selective encryption, which is well-known to include encryption of selected part of the content, as one way to encrypt the content. Therefore, So teaches all the elements of claim 1, and as discussed before, all the sequences and limitations required by claim 1.

Applicants lastly argue that they find no mechanism by which multiple systems can be simultaneously used with multiple encryption techniques. However, So's paragraph [0063] describes the Control Access System (CAS), which transmits cable specific cryptographic parameters to CPS, which encrypts the content based on those specifications (paragraph [0051]). This shows how So's system can work with multiple cable systems.

Applicants' response include an interview request. The best time to talk about the general merits of an application is after the non-Final rejection. After Final Rejection, an interview is limited to discuss specific issues that could not be resolved during the prosecution, and may be resolved during an interview. Applicants should formally file a request for an interview according to MPEP guidelines, and submit

an interview agenda, identifying the specific issues. Examiner will review the agenda, and based on its merits, grant or reject the interview.